

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

AMERICAN CIVIL LIBERTIES UNION,	)	
<i>et al.</i> ,	)	
	)	
Plaintiffs	)	
	)	
v.	)	Civil Action No.
	)	98-CV-5591
ALBERTO R. GONZALES, in his official	)	
capacity as Attorney General of	)	
the United States.	)	
	)	
Defendant.	)	

**DEFENDANT’S UNOPPOSED MOTION TO  
STAY JUSTIFICATION OF PRIVILEGE**

On June 9, 2006, plaintiffs provided a letter brief to the Court that requested a conference to discuss their dissatisfaction with defendant’s response to their contention interrogatories. In that letter, plaintiffs requested that the Court treat their letter brief as a motion to compel, which the Court subsequently granted. *See* Pl. Mot. to Compel [Doc. No. 278]. Plaintiffs also requested in their letter brief that defendant be directed to provide any support he has to justify his claim of privilege. Pl. Mot. at 15. For the reasons set forth herein, defendant respectfully requests that this Court stay defendant’s obligation to justify any claim of privileges. Plaintiffs do not oppose this motion.

Plaintiffs’ request to require defendant to justify his claims of privilege should be denied without prejudice because plaintiffs’ challenge to defendant’s assertion of privilege is not ripe. Although plaintiffs have filed a motion to compel, apart from plaintiffs’ blanket request that defendant “be instructed to come forward with any support to justify this claim of privilege,”

plaintiffs have not proffered any specific challenge directly related to defendant's assertion of privileges. *See, e.g., Mount Vernon fire Ins. Co. v. Try 3 Bldg. Svcs., Inc.*, 1998 WL 729735, \*4 (S.D.N.Y. 1998) (“[T]here is no logic or efficiency in requiring the proponent of a privilege or the court to address matters which are not contested by the challenger.”). Instead, plaintiffs' letter brief primarily argues that defendant should be ordered to provide a further response. *See generally* Pl. Mot.

However, for the reasons set forth in defendant's Opposition to Plaintiffs' Motion to Compel (filed concurrently with the instant Motion), plaintiffs' interrogatories do, in fact, fall outside the scope of this Court's March 24, 2006 Order, were untimely served, and exceeded the limit of 25 interrogatories (pursuant to Fed. R. Civ. P. 33(a)), without defendant's consent or leave of this Court.

Accordingly, unless this Court were to order defendant to respond to any interrogatories to which defendant has asserted the deliberative process and/or law enforcement privileges and plaintiffs were to challenge the assertion of those privileges, defendant respectfully requests that, in the interests of judicial economy and in light of the time remaining in the Amended Case Management Order, he not be required to devote his limited time preparing and signing the appropriate declaration(s) to perfect the invocation of applicable privileges. Defendant therefore respectfully moves to stay justification of privilege until the Court resolves plaintiffs' current motion to compel.

Pursuant to Local Rule 26.1(f), defendant hereby certifies that the parties met and conferred about this motion. Plaintiffs do not oppose this motion.

### CONCLUSION

For the reasons set forth herein, this Court should grant defendant's unopposed motion to stay justification of privileges asserted.

Dated: June 20, 2006

Respectfully Submitted,

PETER D. KEISLER  
Assistant Attorney General

PATRICK L. MEEHAN  
United States Attorney

RICHARD BERNSTEIN  
Assistant U.S. Attorney

THEODORE C. HIRT  
Assistant Branch Director

/s/ Isaac R. Campbell  
RAPHAEL O. GOMEZ  
Senior Trial Counsel  
ISAAC R. CAMPBELL  
JOEL MCELVAIN  
JAMES D. TODD, JR.  
Trial Attorneys  
United States Department of Justice  
Civil Division, Federal Programs Branch  
20 Massachusetts Ave. N.W  
Washington, D.C. 20530  
Tel: (202) 616-8476

Attorneys for Defendant

**CERTIFICATE OF SERVICE**

I hereby certify that on June 20, 2006, a copy of Defendants' Unopposed Motion To Stay Justification of Privilege and Points in Support Thereof was filed electronically via the Court's ECF system, through which a notice of the filing will be sent to:

Aden Fine  
American Civil Liberties Union Foundation  
125 Broad Street  
New York, NY 10004

Attorney for Plaintiffs

/s/ Isaac R. Campbell  
ISAAC R. CAMPBELL